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Attorneys for Dias Plaintiffs and all others similarly situated.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JUDY LARSON, BARRY HALL, JOE MILLIRON, TESSIE ROBB, WILLIE DAVIS, ROMAN SASIK, DAVID DICKEY et al., individually and on behalf of others similarly situated, } Case No.: 07-05325 (JLL)
Plaintiffs, } Hon. Judge Jose L. Linares
vs. }
AT&T MOBILITY LLC f/k/a CINGULAR WIRELESS LLC, and SPRINT NEXTEL CORPORATION and SPRINT SPECTRUM L.P. d/b/a SPRINT NEXTEL and NEXTEL FINANCE COMPANY } DECLARATION OF JOSEPH ANTONELLI IN SUPPORT OF DIAS PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES AND COSTS AND NOTICE OF INTENT TO APPEAR AT FINAL APPROVAL HEARING
Date: June 29, 2010
Time: 2:00 p.m.
Dept.: MLK 5D
Dias Action Filed: May 27, 2004
Defendants.

1 I, Joseph Antonelli, declare:

2 1. I am an attorney duly licensed to practice law before all courts in the
3 State of California. I am the attorney for plaintiffs Denise Dias and Stacy Day in
4 the matter of Dias v. AT&T Wireless Services, Inc., Superior Court of the State of
5 California for the County of Los Angeles, Case No. BC316195. I have personal
6 knowledge of the facts herein. If called as a witness, I could and would
7 competently testify herein.

8 2. I have been litigating the Dias case along with my co-counsel, Kevin
9 T. Barnes and Gregg Lander of the Law Offices of Kevin T. Barnes, and Peter T.
10 Cathcart of Magana, Cathcart & McCarthy, since May 27, 2004. The Dias matter
11 is currently stayed pending appeal. The Dias matter pleads the same allegations in
12 the matter of Hall v. AT&T MOBILITY LLC, United States District Court,
13 District of New Jersey, Case No. 07-5325 (D.N.J.), and seeks the same damages.
14 At no time during the pendency of the Dias matter has anyone filed a Notice of
15 Related Case, nor informed any of the Dias counsel of the pending Hall matter. In
16 fact, counsel learned of the Hall settlement through defense counsel after the Hall
17 matter was resolved.

18 3. Pursuant to the settlement agreement in Hall, which was provided to
19 me as a courtesy by defense counsel, William M. Connolly, Esq. I am submitting
20 this declaration pursuant to paragraph 8 of the Preliminary Approval Order dated
21 November 5, 2009. This declaration has been timely submitted to Class Counsel
22 Strange & Carpenter and Mr. Cecchi on or about March 23, 2010 pursuant to the
23 Preliminary Approval Order, which requires ETF Counsel to submit a summary of
24 attorneys' fees they wish to seek as part of the settlement, to class counsel not later
25 than twenty-one (21) days prior to the Final Approval hearing, which was
26 originally set for April 14, 2010. The Dias counsel are specifically listed and
27 identified as ETF Counsel in at least the following paragraphs of the court
28 approved Settlement Agreement: page 10 at ¶22 ETF Counsel – definition of ETF

1 Counsel; page 10 at ¶23 ETF Related Claims – Dias is considered part of this
 2 definition; ¶40 Related Actions- Dias is part of the definition. (A true and correct
 3 copy of the Court Approved Settlement Agreement and Preliminary Approval
 4 order are attached hereto collectively as **Exh. 10**) The Notice to the Class also list
 5 the Dias case as a related case. Of the 8 cases listed as Related Cases, the Dias and
 6 Waldmann matters appear to be the oldest, having been filed in May 2004. I also
 7 note that the ETF claim in the Dias matter does relate back to October 2002
 8 whereas the ETF claim that settled reached back to only September 1, 2005.
 9 Accordingly, the Dias case definitely provided value to the settlement in that it
 10 reached back a full 3 years more than the settled claims. Furthermore, the Dias
 11 matter was hotly litigated as discussed below and the Dias plaintiffs' were
 12 successful in defeating the defendant's attempt to have the matter sent to
 13 mandatory arbitration. AT&T appealed the ruling and ultimately abandoned said
 14 appeal. It is true that Judge Carl West has granted a dispositive motion in favor of
 15 the defendant; however said order has been appealed by Dias. The Dias counsel
 16 have been successful in challenging Judge Carl West in another class action that
 17 resulted in a reversal in a published opinion (see *Tien v. Sup. Ct.* (2006) 139 Cal.
 18 App. 4th 528). Accordingly, although declarant has the utmost respect for Judge
 19 West, Dias is confident that there will be a successful result in the court of appeal.

20 After submitting a declaration and attorney billing to Class Counsel, Brian
 21 Strange, declarant made numerous attempts to speak with Class Counsel Brian
 22 Strange. I have yet to receive the courtesy of a telephone call or any substantive
 23 response concerning the request for fees and costs. (Attached hereto as **Exh.11** is a
 24 true and correct copy of the original declaration provided to Mr. Strange and James
 25 E. Cecchi.) A copy of **Exhibit 11** was also provided to defense counsel, Mr.
 26 William Connolly on or about April 5, 2010. Mr. Strange did call my office with
 27 his co-counsel Mr. Cecchi on Monday June 21 but when I returned the call Mr.
 28 Strange was unavailable and Mr. Cecchi was unwilling to discuss the matter

1 without Mr. Strange being present. Mr. Cecchi agreed to call me back with Mr.
2 Strange on Tuesday June 22 but failed to follow through on this promise. When I
3 asked Mr. Cecchi why my declaration and request for fees and costs were not filed
4 with the court, Mr. Cecchi said he had no obligation to do so. I believe that as third
5 party beneficiary to the Settlement Agreement that Class Counsel had an obligation
6 to review the fee request and submit it to this court as I have requested on multiple
7 occasions. Furthermore, the Settlement Agreement at page 25 certainly places an
8 obligation on Class Counsel to submit the fee requests of all ETF Counsel. This
9 Settlement Agreement was approved by the Court and terms were specifically
10 approved as part of the Preliminary Approval order. Thus it is Dias position that
11 Class Counsel breached their ethical obligations, the settlement agreement,
12 breached their fiduciary obligations, and they are in violation of the Court
13 Preliminary Approval Order.

14 4. At some point, I did receive a request from Class Counsel Strange &
15 Carpenter to submit a breakdown of hours pursuant to a spreadsheet template that
16 was provided by Class Counsel. (A true and correct copy of the e-mail dated May
17 20, 2010 is attached hereto as **Exh. 12**). Thereafter, Strange & Carpenter sent
18 another email dated May 20, 2010 stating that since there was “no agreement” for
19 fees that there was no need to complete the spreadsheet. (A true and correct copy
20 of the e-mail dated May 20, 2010 is attached hereto as **Exh. 13**). I sent a series of
21 correspondence requesting a time to discuss this matter and received only 1
22 response from Mr. Strange. (True and correct copies of the various emails and the
23 one response from Mr. Strange are collectively attached as **Exh. 14**.) On Thursday
24 June 17, 2010 I searched the docket for the case to discover that Class Counsel
25 have violated the Court orders and failed to submit the Dias request for fees and
26 costs. Dias ETF Counsel have acted diligently in submitting these papers in a
27 prompt and timely fashion. I was forced to locate local counsel and have
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1 submitted a pro hac vice application in order to file these papers and appear at the
2 Final Approval hearing.

3 5. The total time spent at this point does not include time through final
4 appeal, if this does not resolve herein. In addition, there have been three (3) law
5 firms who in total provided approximately 9 lawyers working on behalf of the Dias
6 plaintiffs and putative classes. These hours are more fully detailed and broken
7 down in paragraph 25 below. In reality the hours worked on the case has increased
8 since the time of completing the attached hourly bills. The hours as represented in
9 the breakdown provided to Class Counsel, Brian Strange (**Exh 6**) shows the
10 combined total of 1,551.70 hours for the Dias counsel. The difference in the two
11 figures of 54.40 is a result of a second audit conducted on the bills provided herein
12 as Exhibit 3. For purposes of this declaration and request, Dias counsel will
13 discuss the hours of 1,497.3 as that is the number that was provided to class
14 counsel on March 23, 2010. This is also the declaration and number provided to
15 defense counsel Mr. Connolly.

16 The total of 1,497.3 hours expended to date on this matter is very
17 reasonable. If the matter does not settle and continues through the appellate
18 process there is a reasonable probability that an additional 100-150 hours will be
19 expended through appeal. Each attorney who has worked on this matter has done
20 so at the direction of the Law Office of Joseph Antonelli or at the direction of
21 Magana, Cathcart & McCarthy, and each firm has provided detailed records
22 describing the amount of time spent on litigating this case and the hourly rate
23 charged by each timekeeper. Further, I have been provided a copy of each firm's
24 time records. I have reviewed each time entry from my office and ensured to the
25 best of my ability that all time expended was reasonable and necessary in order to
26 protect the interests of the class. True and correct copies of time records for my
27 firm, Magana, Cathcart & McCarthy, and the Law Offices of Kevin T. Barnes are
28 attached hereto as **Exhibits 3, 4, and 5**, respectively. Furthermore, a breakdown of

1 hours and costs is provided separately as **Exh. 6**. This breakdown of fees and costs
2 were provided to ETF counsel on June 7, 2010.

3 5. Class counsel has experience not only in class actions and
4 employment litigation, but specifically in wage and hour class actions. This case
5 involved three (3) class action law firms acting as co-counsel and approximately 9
6 lawyers assisting in the endeavor. Class Counsel are experienced and qualified to
7 evaluate the class claims and viability of the defenses.

8 6. The Dias plaintiffs' counsel is experienced counsel who participated
9 in all aspects of this action and supports the settlement. I am qualified to act as
10 class counsel. I graduated from Loyola Law School and obtained my Jurisprudence
11 Doctorate in May 1988. I took the California Bar Examination in July 1988 and
12 received my passing results in November 1988. I was admitted to practice law in
13 the State of California and the Federal Courts in December 1988. I have remained
14 in good standing as a member of the California bar since admission through the
15 present time. I have litigated numerous successful wage and hour class actions in
16 California.

17 Janelle Carney is qualified to act as class counsel. She graduated from
18 Whittier College School of Law and obtained her Jurisprudence Doctorate in May
19 1988. Ms. Carney took the California Bar Examination in February 1999 and
20 received her passing results in May 1999. She was admitted to practice law in the
21 State of California and the Federal Courts on June 8, 1999. Ms. Carney has
22 remained in good standing as a member of the California bar since admission
23 through the present time. Ms. Carney has litigated numerous successful wage and
24 hour class actions in California. Since her admission to the bar, Ms. Carney has
25 worked at the Law Office of Joseph Antonelli and our office has focused on wage
26 and hour class actions since that time. Ms. Carney became a partner at the Law
27 Office of Joseph Antonelli on July 1, 2007.

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1 Kevin T. Barnes is qualified to act as Class Counsel. Mr. Barnes graduated
2 from the University of Colorado at Boulder in 1985 and Loyola Law School in
3 1988. Mr. Barnes has been invited on numerous occasions to speak on class action
4 and wage-and-hour employment issues. Mr. Barnes has spoken at seminars put on
5 by the Labor and Employment Section of the Los Angeles County Bar Association,
6 various labor lawyer associations, seminars for mediators and Nuts & Bolts
7 seminars for new lawyers. Mr. Barnes has been selected as a Southern California
8 Super Lawyer in 2007 and 2008 in Employment and Labor. This recognition is a
9 selection by my peers based upon ethics, experience and reputation and represents
10 the top 5% of our profession. Mr. Barnes is also AV rated by Martindale-Hubbell,
11 the highest possible rating for a lawyer.

12 Gregg Lander graduated from Texas A&M University in 1989 with a
13 Bachelor of Business Administration degree in Marketing. He graduated from
14 California Western School of Law in San Diego and was admitted to the California
15 Bar in 1997. He joined The Law Offices of Kevin T. Barnes in 2001 and became a
16 partner in 2004. He is admitted to practice before the following Courts: all
17 California State Courts, all Texas State Courts, United States District Court for the
18 following California Districts: Northern, Central, Eastern and Southern, United
19 States Court of Appeal for the Ninth Circuit, United States Court of Appeals for
20 Veteran's Claims, United States Court of Appeals for the Armed Forces, United
21 States Court of Appeals for the Federal Circuit, United States Tax Court, United
22 States Court of International Trade, United States Court of Federal Claims and
23 United States Supreme Court. He was recognized as a Southern California Super
24 Lawyer in 2004 and was a speaker at the Bridgeport December 2008 Wage & Hour
25 Litigation Conference. Mr. Lander's standard hourly rate for class action litigation
26 is \$550 per hour.

27 Furthermore, in 2007 Mr. Barnes, with co-counsel Joseph Antonelli, tried a
28 wage and hour class action case entitled Mutuc v. Huntington Memorial Hospital,

1 LASC Case No. BC288727. On September 14, 2007, Judge William A.
2 MacLaughlin issued a Statement of Decision and a supplemental Statement of
3 Decision on January 5, 2008, awarding the class members restitution in the amount
4 of \$32,857,014.83. Further, on August 29, 2008, Mr. Barnes tried a wage and hour
5 class action case entitled Solis v. Worldwide Attorney Service, Inc., OSCS Case
6 No. 03CC00069. These are two of only a small number of wage and hour class
7 action cases ever actually tried in the State of California.

8 Peter Cathcart is qualified to act as class counsel. Mr. Cathcart graduated
9 from Loyola Law School and obtained his Jurisprudence Doctorate in June 1980.
10 He took the California Bar Examination in July 1980 and received a favorable
11 result in November 1980. Mr. Cathcart was admitted to practice law in the State of
12 California and the Federal Courts in December 1980 and has remained in good
13 standing as a member of the California Bar since admission through the present
14 date. Mr. Cathcart has been involved in a number of successful wage and hour as
15 well as consumer class actions in California.

16 7. The associate attorneys working on the matter are all licensed
17 attorneys. Michael R. Gradisher, who was admitted to the California State Bar on
18 December 11, 1986, graduated from Pepperdine University School of Law in
19 Malibu, California; Rebecca Olavarria, who was admitted to the California State
20 Bar on December 17, 1991 graduated from Brigham Young University, J. Reuben
21 Clark Law School in Utah; James E. Millar was admitted to the California State
22 Bar on February 4, 1980 and graduated from UC Hastings College of Law in San
23 Francisco, California; Anne M. Huarte graduated from Loyola Law School in Los
24 Angeles, California and was admitted to the California State Bar on June 9, 1992.

25 8. Class Counsel are respected members of the California Bar with
26 strong records of vigorous and effective advocacy for their clients, and they are
27 experienced in handling complex class action and employment litigation.

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1 9. In addition to the numerous class action wage and hour matters
2 litigated by my firm, we have received three (3) favorable published Court of
3 Appeal opinions, Huntington Memorial Hospital v. Superior Court (Mutuc) (2005)
4 131 Cal. App. 4th 893 and Tien v. Superior Court (2006) 139 Cal.App. 4th 528,
5 and Jaimez v. DAIOHS USA, Inc., 181 Cal. App. 4th 1286 (Cal. Ct. App. 2010).
6 Plaintiffs' counsel has been appointed class counsel on over 100 and hour class
7 actions.

8 10. The following is a partial list of class action settlements wherein my
9 office and the Law Offices of Kevin T. Barnes have been appointed class counsel:
10 (1) Declarant, Mr. Barnes, were appointed class counsel in Davis v. Methodist
11 Hospital of Southern California, Case No. BC380177 pending before the
12 Honorable Victoria Chaney; (2) Declarant and Mr. Barnes and Class Action
13 Litigation Group were approved as class counsel in the matter of Lakso-Hoellinger
14 v. UHS, Los Angeles Superior Court Case No. BC342312. The Honorable Joanne
15 O'Donnell entered an Order Granting Final Approval of Class Action Settlement;
16 (3) Declarant and Mr. Barnes were approved as class counsel in the matter of Rent-
17 A-Center Overtime Cases, JCCP No. 4401. The Honorable Edward A. Ferns
18 entered an Amended Order Granting Final Approval of Class Action Settlement.
19 (4) Declarant and Mr. Barnes were approved as class counsel in the matter of
20 Guardado v. Unifirst, Los Angeles Superior Court Case No. BC317814. Judge
21 Jane Johnson entered an order granting final approval and settlement; (5)
22 Declarant, Mr. Barnes, and others were approved as class counsel in the matter of
23 Andrea Roen v. Lieberman Research Worldwide, et al., Los Angeles Superior
24 Court Case No. BC316196. Judge Elihu M. Berle entered an order approving class
25 certification and settlement; (6) Declarant, Mr. Barnes, and others were approved
26 as class counsel in the matter of Barajas v. Cintas, Los Angeles County Superior
27 Court Case No. BC261276. Judge Charles W. McCoy entered an order approving
28 class certification and settlement; (7) Declarant, Mr. Barnes, and others were

1 approved as class counsel in the matter of Sanchez v. L&N Uniform, Los Angeles
2 County Superior Court Case No. BC262766. Judge Anthony J. Mohr entered an
3 order granting final approval and settlement; (8) Declarant and Mr. Barnes were
4 approved by Judge Ernest Hiroshige on as class counsel in the matter of Toney, et.
5 al. v McDonald's Restaurants, Los Angeles County Case No. BC234243, that
6 resulted in a confidential settlement; (9) Declarant and Mr. Barnes were approved
7 as class counsel in the matter of Tong v. 21st Century Insurance Co., Orange
8 County Superior Court Case No. 01CC10913 consolidated with Los Angeles
9 Superior Court Case No. BC234243, Requirme v. 21st Century Insurance Co.
10 Judge Charles W. McCoy entered an order granting final approval and settlement;
11 (10) On or about July 2001, the Los Angeles Superior Court, in the matters of
12 Calvo v. McKesson, et. al., and Ware v. McKesson, et. al., Case Nos. BC228366
13 and BC231420, Bruce Mitchell, Commissioner, entered an order approving class
14 certification and settlement; (11) On April 4, 2000, Declarant Kevin Barnes, Esq.,
15 and other counsel were approved by the Los Angeles Superior Court as Lead Class
16 Counsel in the coordinated action of Cardilino v. Perrier (BC210181) and Holt v.
17 Great Spring Water (Orange County Superior Court Case No. 810642)
18 {"Arrowhead"}. Commissioner Bruce Mitchell entered an order approving class
19 certification and Settlement on July 10, 2000; (12) Declarant and Mr. Barnes
20 were approved by the Los Angeles County Superior Court as lead counsel along
21 with other counsel in the matter of Cruz v. Suntory Water Group, Inc. BC 243596.
22 The court before the Honorable Anthony Mohr granted Final Approval; (13)
23 Declarant and Mr. Barnes were approved by the Los Angeles County Superior
24 Court as lead counsel in the matter of Gonzalez v. Nestle Waters of North America
25 (Arrowhead), Los Angeles Superior Court Case No. BC321485. The court before
26 the Honorable Edward Ferns granted Final Approval; (14) Declarant and Mr.
27 Barnes along with other counsel in the consolidated matters of Bowen v.
28 Footlocker Retail, Inc. and Brown v. Footlocker Retail, Inc., Los Angeles County

1 Superior Court Case Nos.: BC324956 and BC324890. The court before the
2 Honorable Emilie Elias granted Final Approval of a class action settlement; (15)
3 On or about May 2, 2007, the Santa Clara County Superior Court granted final
4 approval of a class action settlement in the matter of Karsner v. Jiffy Lube, JCCP
5 No. 4345; (16) On or about May 4, 2004, the Santa Clara Superior Court entered
6 an Order granting final approval in the matter of Carney v. Heald College (Santa
7 Clara Case No. CV807318); (17) Declarant, Mr. Barnes, and others were
8 approved as class counsel in the matter of Dannelley, et. al. v. Hollywood Video,
9 et. al., Santa Clara Superior Court Case No. CV788126. Judge Jack Komar
10 entered an order granting final approval and settlement; (18) Declarant, Mr.
11 Barnes, and other counsel were approved as class counsel in the consolidated
12 matters of Williams v. Staples, Inc., Marrs v. Staples, Inc., Mitchell v. Staples,
13 Inc., Hutchins v. Staples, Inc., and Amarillo v. Staples, Inc., JCCP No. 81621. The
14 Honorable Ronald L. Bauer entered an order granting final approval and
15 settlement; (19) On or about February 25, 2005, the Orange County Superior
16 Court, in the matter of Evans v. New Horizons, Case No. 02CC00211, declarant
17 and Mr. Barnes were appointed class counsel. Judge Stephen Sundvold entered a
18 final approval order; (20) On or about May 27, 2004, the Orange County Superior
19 Court, in the matter of Call-Laughorne v. AMN Healthcare, Case No. 02CC16449,
20 declarant and Mr. Barnes were appointed class counsel. Judge David C. Velasquez
21 entered an order approving the; (21) Declarant and Mr. Barnes were approved by
22 the Orange County Superior Court by Judge Jonathan H. Cannon as lead counsel in
23 the matter of Fiez v. Brown Group Retail, Inc., 01CC00381. The court before the
24 Honorable Jonathan H. Cannon on December 11, 2003 granted Final Approval;
25 (22) Declarant and Mr. Barnes were approved by the Orange County Superior
26 Court by Judge C. Robert Jameson as lead counsel in the matter of Berry et. al. v.
27 Cost Plus, 01CC00380. The court before the Honorable C. Robert Jameson on
28 March 20, 2003 granted Final Approval; (23) Declarant and Mr. Barnes were

1 approved by the Orange County Superior Court by Judge C. Robert Jameson as
 2 lead counsel in the matter of Lajoie, et. al. V. The Picture People, 01CC00324.
 3 The court before the Honorable C. Robert Jameson granted Final Approval; (24)
 4 On or about January, 2002, the Orange County Superior Court by Judge Robert
 5 Thomas granted Class Certification of a class of SMs in a confidential settlement;
 6 (25) On or about February 20, 2002, the Orange County Superior Court by C.
 7 Robert Jameson granted Final Approval of Class Action Settlement in Maldonado
 8 v. Footaction, Case No. 00CC06359; (26) On or about August 8, 2002, the
 9 Orange County Superior Court by Judge C. Robert Jameson granted Final
 10 Approval of Class Action Settlement in Franco v. Vans Inc., Case No.
 11 01CC03995; (27) On or about September 1, 2000, the Orange County Superior
 12 Court, in the matter of Martins v. Payless Shoesource Inc., Case No. 814585,
 13 declarant and Mr. Barnes were appointed class counsel. Judge Stuart Waldrip
 14 entered a final approval order; (28) Declarant and Mr. Barnes were approved by
 15 the San Diego County Superior Court as class counsel in the matter of Clarkson v.
 16 Kmart Holding Corporation, San Diego Superior Court Case No. GIC840442. The
 17 court before the Honorable Ronald L. Styn granted Final Approval; (29) On or
 18 about January 19, 2000, the San Diego Superior Court entered an Order for Class
 19 Certification in the coordinated matter of Hines v. CSK Auto; Tett v. CSK Auto;
 20 and Noel v. CSK Auto (San Diego Superior Court Case No. 720346) {"Kragen
 21 Auto"}). Declarant and Mr. Barnes were appointed class counsel on the Kragen
 22 matter. The San Diego Superior Court entered an order of Final Approval of class
 23 action settlement.

24 **FEES AND COSTS**

25 11. Plaintiffs request attorneys' fees in the amount of \$893,055 and costs
 26 in the amount of \$41,703.70.

27 12. Dias Class Counsel's lodestar request without even applying a
 28 multiplier is at \$893,055 which is approximately 14.8% of the request for

1 attorneys' fees in the amount of \$6,000,000. Counsel submits that a request of
2 14.8% of the \$6,000,000 in the amount allocated for attorneys' fees in the
3 settlement is fair and reasonable. There can be little doubt that Dias counsel have
4 provided value in helped in the settling of all the cases. It is unfortunate that the
5 defense and Class Counsel conducted a "back room" mediation and resolved the
6 case without the knowledge of Dias counsel. Class Counsel and the defendants
7 should not be rewarded for failing to disclose the impending litigation and the later
8 negotiations as this harms the integrity of the legal profession. In my experience
9 when I have become aware of related case, I contact all related counsel and take a
10 leadership role in bringing all parties to the table. In this fashion, there is open
11 disclosure and all parties and all counsel can have a say in the settlement
12 discussions. Further, my method usually leads to more settlements that are
13 affirmed and not attacked in appellate procedures, which ultimately helps the class
14 members.

15 The Dias plaintiffs request reimbursement of costs of \$41,703.70, as their
16 actual costs incurred. The settlement agreement allows for actual recovery of costs
17 without any limitation. However, counsel submits that each costs incurred and
18 paid by Dias plaintiffs is fair and reasonable. Class Counsel is unwilling to make
19 an offer to pay any money on fees or costs as of this time.

20 13. The defendant retained a prominent law firm to defend this action and
21 the matter was hotly litigated from the beginning through two (2) appellate
22 procedures.

23 14. The Dias plaintiffs counsel provided 1,497.30 hours with not less than
24 nine (9) lawyers actively litigating this case for over five (5) years.

25 15. Class Counsel risked not only a great deal of time, but also a great
26 deal of expense to litigate the Dias action on behalf of all class members. As
27 stated, the Dias counsel advanced costs totaling \$41,703.70, for which they are
28 seeking to be reimbursed as itemized below. A practice can only properly litigate

1 so many cases at one time. The requirements of this case were significant,
2 requiring almost exclusive dedication of class counsel time in this fast paced
3 intense litigation. Counsel was precluded from other employment. For the
4 convenience of the Court, a true and correct copy of the costs bill of my firm is
5 attached hereto as **Exhibit 1**. A true and correct copy of the costs bill for the Law
6 Offices of Kevin T. Barnes and Magana, Cathcart & McCarthy are attached hereto
7 collectively as **Exhibit 2**.

8 16. Class counsel earned the requested fee, as this case was vigorously
9 litigated. This case was hotly litigated for just about five (5) years. There was a
10 tremendous amount of work performed by plaintiffs' counsel and experts. Not less
11 than 1,551.70 hours have been expended by the lawyers on this case.

12 17. As a practical matter, few if any employees pay attorneys' fees on an
13 hourly basis for such extensive litigation, and thus retainer agreements in such
14 cases are based on a contingency fee relationship. Therefore, there is no customary
15 billing rate, but the nature of class action work should be strongly considered by
16 the Court.

17 18. A survey conducted by The National Law Journal for the year 2006
18 provides a sample of a billing rate for California lawyers. In that survey, thirteen
19 (13) California firms provided their hourly billing rates. Of those thirteen (13)
20 firms, nine (9) regularly charge in excess of \$600.00 per hour for their partners. In
21 fact, nine (9) of the firms charged as high as \$605.00, \$625.00, \$650.00, \$725,
22 \$750, \$795, and \$825.00 per hour. These firms are located in Orange County, Los
23 Angeles County, San Francisco County and San Diego County. (See the National
24 Law Journal Survey attached hereto as **Exhibit 7**)

25 19. Furthermore, in 2007, the National Law Journal (NLJ) conducted
26 another survey in which 8 California law firms have provided their Partner Billing
27 Rate High and such rate averages \$711.87 per hour. See the National Law Journal
28 Survey 2007, **Exhibit 8**. This billing survey confirms that partners at quality large

1 law firms regularly charge above the amount the plaintiffs seek in the case at bar.
2 The firms listed on the NLJ survey are the same firms or similar firms to those that
3 Plaintiffs' counsel regularly opposes in these class action cases. A major difference
4 between the National Law Journal Defense firms and plaintiffs' firms is that these
5 defense attorneys are paid on a monthly basis and earn interest on outstanding
6 balances. Further, these defense firms usually do not have to advance costs on a
7 case for a protracted period. To the contrary, Plaintiffs' counsel is only paid if they
8 win and must advance all costs until the case is resolved.

9 20. There was the enormous cost inherent in class action litigation, as well
10 as a long battle with a large corporation with a high powered and well respected
11 defense law firm. Had the case gone to trial class counsel was committed to
12 expend substantial time and invest up to at least \$500,000.00 in costs. As
13 demonstrated above, all three (3) law firms worked in a cooperative fashion
14 throughout the litigation in an attempt to minimize duplication of work. The
15 prospect of losing and incurring substantial costs has previously become reality, in
16 both trial courts and the Court of Appeal in other wage and hour class litigation.

17 21. Courts have upheld rates as high as \$450 per hour (in 1993) in
18 employment matters. (Bihun v. AT&T Information Systems, Inc. 13 Cal. App. 4th
19 976 (1993), overruled on other grounds in Lakin v. Watkins Assoc. Indus. 6 Cal.
20 4th 644, 664 (1993). The \$450 in 1993 is equivalent to **\$674.80** in 2010 dollars
21 according to the "inflation calculator" provided by the US Government, Bureau of
22 Labor Statistics located at <http://data.bls.gov/cgi-bin/cpicalc.pl> (See **Exhibit 9**, a
23 true and correct copy of the DOL website calculator conversion of the \$450 in
24 1993 to present dollars). All of counsel's skill and experience justify the requested
25 rate. The Law Office of Joseph Antonelli and The Law Offices of Kevin T. Barnes
26 practice litigation with a focus on representing employees in employment matters
27 on class action cases. These firms have litigated numerous class actions.
28 Plaintiffs' counsel are pioneers in litigating the complexity and nuances of the dual

1 rate pay practices. (See Mutuc v. Huntington Memorial Hospital, LASC Case No.
2 BCC288727, Statement of Decisions dated September 14, 2007 and January 25,
3 2008.

4 22. Plaintiffs request the Court find that counsel's requests of \$650.00 per
5 hour for Joseph Antonelli and for Kevin T. Barnes. Furthermore the plaintiffs
6 request that the Court find that Janelle Carney and Gregg Lander be approved at
7 \$550 per hour. Peter Cathcart and Anne Huarte's request of \$550 per hour is
8 reasonable given counsel's experience.

9 23. All of counsel's skill and experience justify the requested rate. The
10 Law Office of Joseph Antonelli and The Law Offices of Kevin T. Barnes practice
11 litigation with a focus on representing employees in employment matters on class
12 action cases. The issues in the herein cases are very difficult area of law and not
13 within the knowledge of many lawyers. Class action work also requires specialized
14 learning and the willingness to take large risks. The total hours incurred does not
15 include over one thousand hours of staff time and what Counsel collectively
16 expects to expend in administering the payment portion of the case, including
17 preparation for and attending the final approval hearing as well as resolving all of
18 the pending disputes.

19 24. The Dias plaintiffs' counsel's time in this case included but is not
20 limited to the following items: Investigation pre-filing from approximately October
21 2003 until May 2004 - the date of filing the first action. Drafting and responding
22 to several rounds of discovery, taking and/or defending two (2) depositions;
23 reviewing hundreds of thousands of documents; preparing substantive motions;
24 opposing substantive motions; preparing motions in limine, and preparing for trial.
25 Furthermore, the case has been appealed on two (2) separate occasions once by
26 AT&T and presently by the Dias plaintiffs.

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1 25. The requirements of this were significant, requiring over 1551.70
 2 hours of attorney time. The lodestar value of attorney fees requested is as follows:

3 **A. Law Office of Joseph Antonelli**

		HOURS	RATE	LODESTAR
5 1.	Joseph Antonelli	813.10	\$650	\$528,515.00
6 2.	Janelle Carney	260.60	\$550	\$143,330.00
7 3.	James E. Millar	51.30	\$450	\$23,085.00
8 4.	Michael R. Gradisher	80.40	\$450	\$36,180.00
9 5.	Rebecca Olavarria	3.50	\$450	\$1,575.00
10	Subtotal	1208.90	\$606.08	\$732,685.00

12 **B. Law Offices of Kevin T. Barnes**

		HOURS	RATE	LODESTAR
14 1.	Kevin T. Barnes	35.10	\$650	\$22,815.00
15 2.	Gregg Lander	8.50	\$550	\$4,675.00
16	Subtotal	43.60	\$630.50	\$27,490.00

18 **C. Magana, Cathcart & McCarthy**

		HOURS	RATE	LODESTAR
20 1.	Peter Cathcart	78.6	\$550	\$43,230.00
21 2.	Anne M. Huarte	190	\$550	\$104,500.00
22	Subtotal	268.6	\$550	\$147,730.00

24 **Grand Total:** **1521.1** **\$587.11** **\$893,055**

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Plaintiffs' counsel worked diligently and attempted to avoid any unnecessary duplication of efforts with Law Office of Joseph Antonelli and taking the lead role in the litigation. The class lawyers worked in a cooperative and efficient manner on behalf of the class.

26. The request for reimbursement of costs is fair and reasonable. The costs bill for each firm is summarized as follows:

A.	Law Office of Joseph Antonelli	\$9,042.72
B.	Law Offices of Kevin T. Barnes	\$502.50
C.	Magana, Cathcart & McCarthy	\$32,158.48
Total Costs Request		\$41,703.70

VALUE OF SERVICES PROVIDED

27. As briefly discussed above, Dias counsel believe that the Dias plaintiffs and counsel efforts have brought great value to the present settlement. First each plaintiff did have their deposition taken in the case. This case has been litigated longer and more vigorously than any other related case and more vigorously than the Hall case. Dias was instrumental in thwarting defendants' attempts to have all class members subjected to the less desirable forum of arbitration. This feat was not accomplished by all other related cases. It is more than a coincidence that the current matter is settling at a time when Dias is in the court of appeal challenging the ETF order of Judge West. A favorable ruling for the class in the California Court of Appeal may have increased the value of the case sevenfold, if not more. Dias as stated above has a longer statute of limitations on the ETF claim than any other case. Defendants herein recognized that the Dias class had a longer ETF class and a great chance to overturn the dispositive ruling in the Los Angeles Superior Court.

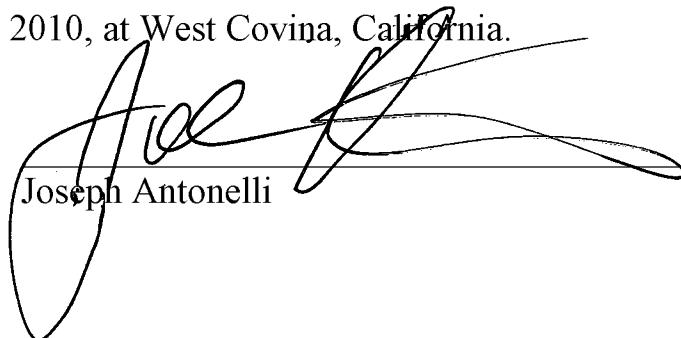
It is dishonorable and disingenuous for Class Counsel to not offer to pay for any value for the services provided and to fail to even talk to declarant. At this

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1 point, Dias requests that the court compensate counsel for their reasonable time,
2 effort, and expenses incurred.

3 I declare under penalty of perjury under the laws of the State of California ,
4 the laws of the State of New Jersey, and the United States of America, that the
5 foregoing is true and correct.

6 Executed this 23rd day of June, 2010, at West Covina, California.



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Joseph Antonelli